

Docket No. H 3691 PCT/US  
Serial No. 09/807,837

## REMARKS

### Status of claims:

Claims 9 to 27 are pending in this application.

### Rejections:

The rejections are summarized as follows:

- Claims 1(should be 9) - 18, 22 - 24 and 27 are rejected under 35 USC 103(a) as being unpatentable over Guan et al. in view of Kauffman et al. and Nuttens et al.
- Claims 19-21 and 25-26 are rejected under 35 USC 103(1) as being unpatentable over Guan et al. in view of Kauffman et al., Nuttens et al. and the PCT document of Butterbach et al. (WO 98/40883).

The primary reference in both grounds of rejection is Guan et al. (US Patent No. 6,165,299) which has a priority date of August 26, 1998, the filing date of the provisional application from which '299 ultimately issued. Applicants reply by submitting a Declaration under 37 CFR 1.131, enclosed herewith.

The 37 CFR 1.131 Declaration is signed by Mr. Ruediger Butterbach, one of the co-inventors of the subject invention. This Declaration and its accompanying exhibits provide evidence of the conception and reduction to practice of the subject invention by the Applicants named in the present application before the priority date

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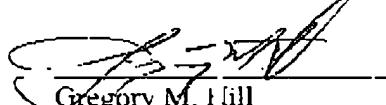
of the Guan et al. reference. It is respectfully submitted that, in view of the earlier invention by Applicants, the patent to Guan et al. should be removed as a reference.

With the removal of Guan et al. as the primary reference in both grounds of rejection, there is no need to comment solely on the secondary references. Without the primary reference, these secondary references now fail to meet the standards for rejecting claims under 35 USC 103(a). Applicants reserve the right to present rebuttal comments directed at the secondary references should the need arise during any further prosecution of the present application.

**CONCLUSION**

In view of the foregoing amendment and accompanying remarks, it is respectfully submitted that the amended claims present patentable subject matter. The prompt issuance of a notice of allowance is earnestly solicited. The Commissioner is hereby authorized to charge any deficiency in the required fee or to credit any overpayment in connection with this amendment to Deposit Account 01-1250.

Respectfully Submitted,

  
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